IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.2540 Of 2004

BETWEEN

Dr. S.Jahiruddin (Chief Executive Officer) S/o Late Shri Hazi Rahimuddin, aged about 46 years, Janpad Panchayat Darbha (now attached with Office of Collector, Bastar, Jagdalpur) District Bastar, Jagdalpur (CG).

PETITIONER

A N D

1. The State of Chhattisgarh,
Through the Principle Secretary, SC, ST, OBC and Minority Welfare Department (Tribal Welfare Development Deptt)
Mantralay, D.K.S. Building, Raipur (CG).

2. Commissioner,
Tribal Development, Office at University Campus,
Raipur (CG).

3. The Collector,
District Bastar at Jagdalpur (CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

R. No. 2534/04 Presented by Shri Rakesh Mishra dated 11-8-04

RECEIVED-COPY 11.8.04 Clerk to A.G. Bilaspur

Petitioner.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(55)

आदेश पत्रक

मामला क्रमांक W.P.No.2540/2004 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

16-09-2004.

Shri Rakesh Anthony, counsel for the petitioner.

Shri V.V.S. Murthy, Dy. Advocate General, for the State/respondents.

The application (I.A.No.5729/2004) for urgent hearing is allowed.

Heard.

By this petition under Articles 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the impugned order dated 30.01.2004 (Annexure P/1), passed by the Collector, District- Bastar at Jagdalpur whereby respondent No. 3/Collector attached the petitioner's services from the office of Chief Executive Officer, Janpad Panchayat, Dharba to the office of the Collector, District-Bastar.

The case of the petitioner is that the petitioner was appointed on the post of Veterinary Assistant Surgeon on 20-05-1981 and his original department is Veterinary Department. Thereafter, the petitioner was working in the Tribal Department on the post of Block Development Officer/Chief Executive Officer. Looking to the work of the petitioner, the State Government, Tribal Department/respondent

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

No.1 decided to take the services of the petitioner in its department on deputation and, therefore, respondent No.1 vide its letter dated 12-02-2002 asked the Veterinary Department for no objection about the deputation of the petitioner. In reply to the said letter, the Head of the Department of Veterinary vide its letter dated 1-3-2002 (Annexure-P/3) informed the respondent No.1 that the Veterinary Department has no objection in taking the services of the petitioner on deputation for the post of C.E.O. in the Janpad Panchayat. Thereafter, vide order dated 3-12-2002 (Annexure-P/4), the services of the petitioner were taken on deputation by respondent No.1 and posted him as C.E.O., Janpad Panchayat, Darbha, District Bastar. In compliance of the said order the petitioner joined his duties on the post of C.E.O., Janpad Panchayat, Darbha, District Bastar. Thereafter, respondent No.3/Collector by its order dated 30-1-2004 (Annexure-P/1) removed the petitioner from the post of C.E.O., Janpad Panchayat, Darbha, District Bastar and attached his services in the office of the Collector, District Bastar and directed the Block Education Officer to take the additional charge of the post of C.E.O.

Counsel for the petitioner submitted that the Collector/respondent No.3 has no power to pass the impugned order Annexure-P/1. He further submitted that only the State Government

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has power to pass such order as the petitioner was posted as Chief Executive Officer on deputation. Counsel for the petitioner referred to Annexure-P/5, issued by the General Administration Department and submitted that the State Govt. has issued some directions in this regard. In Annexure-P/5 it is mentioned that during inspection of the Departments by the Chief Secretary it has come to the knowledge that in some departments particularly Public Health and Family Welfare, Education and S.C./S.T. Welfare and Minority Department, doctors and teachers were attached from their original place of posting to some other departments. As a result of which, concerned departments are not getting the proper services, where, in fact, such employees are posted. Such type of action is vitiated by malafides on the part of the authority. Counsel further submitted that the petitioner is also a doctor and the instructions issued by the State Govt. in Annexure-P/5 are applicable in the case of the petitioner. Counsel for the petitioner placed reliance on the order passed by this Court in W.P. No.1511/2004 (**D.K. Singh V. Chief Executive Officer & others**). Counsel for the petitioner also placed reliance on decisions reported in **(1994) 2 Supreme Court Cases 416** in the matter of **Dr. Ramesh Chandra Tyagi V. Union of India & Others** and **A.I.R.1993**

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Supreme Court 2444 in the matter of **Union of India and others Vs. S.L. Abbas.**

In the case of **Dr. Ramesh Chandra Tyagi (Supra)** the Hon'ble Apex Court has held thus:

> "Competent Authority to order - Delegation of power - Secretary Competent Authority but order of transfer of appellant issued by Director General claiming to be delegated authority - Delegation must exist on the date of passing of transfer order - Office notings revealing that no order delegating power to Director General existing on the date of issuance of the transfer order - Instead of cancelling that order and issuing a fresh order, second order issued in continuation of the earlier one directing the appellant to join at the transferred place of posting - Held, first transfer order, issued by a subordinate authority having no delegated power at that time, was invalid and non est and consequently the second order, founded on it, also could not stand".

In similar matter i.e. **D.K. Singh (Supra)** this Court having given thoughtful consideration set aside the order passed by the Chief Executive Officer, Jila Panchayat, Bilaspur holding that the C.E.O. is not empowered to take such type of action against the

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employee and the State Government is the competent authority to pass such orders.

In the circumstances, counsel appearing for the State/respondents very fairly submitted that liberty may be given to the State Government which is a competent authority to proceed further in the matter.

Having heard counsel for the parties and considered the totality of the circumstances, this Court is of the view that the order dated 30/01/2004 (Annexure-P/1) passed by respondent No.3/Collector, Bastar at Jagdalpur is not sustainable in the eyes of law. Accordingly, the order dated 30/01/2004 (Annexure-P/1) passed by respondent No.3/Collector, Bastar at Jagdalpur is set aside. However, the State Government, which is the competent authority may inquire and take action in the matter in accordance with law.

With the aforesaid observations, this petition stands disposed of. Consequently, M.(W.)P. No.2254 of 2004 also stands disposed of.

Certified copy as per rules.

Sd/-
Fakhruddin
Judge

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